

## **MDM Declaration Exhibit A-17**

Volume I  
Pages 1 to 102  
Exhibits None

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

VIDEOTAPED DEPOSITION OF DERYA ERYILMAZ,  
Ph.D., a witness called by the Defendant, taken  
pursuant to the Federal Rules of Civil Procedure,  
before Alexander K. Loos, Registered Diplomate  
Reporter and Notary Public in and for the  
Commonwealth of Massachusetts, at the Offices of  
Veritext Legal Solutions, 101 Arch Street, Suite  
650, Boston, Massachusetts, on Tuesday, November 15,  
2022, commencing at 10:25 a.m.

## PRESENT:

Wittels McInturff Palikovic  
(By Steven L. Wittels, Esq.; Steven D.  
Cohen, Esq. (Via videoconference); and  
Ethan D. Roman, Esq. (Via videoconference))  
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1 PRESENT (Continued): 2 3 McDowell Hetherington, LLP 4 (By Michael D. Matthews, Jr., Esq.) 5 E-mail: Matt.matthews@mhllp.com 6 1001 Fannin Street 7 Suite 2700 8 Houston, TX 77002 9 713.337.5580 10 for the Defendants.  11 12 ALSO PRESENT: David Coleman 13 Shawn Budd, Videographer  14 * * * * *  15 16 17 18 19 20 21 22 23 24	1 PROCEEDINGS 2 THE VIDEOGRAPHER: Okay. We are on the 3 record. This is the videographer speaking, Shawn 4 Budd, with Veritext Legal Solutions. 5 Today's date is November 15th, 2022, and 6 the time is 9:25 a.m. We are here in Boston, 7 Massachusetts to take the video deposition of Derya 8 Eryilmaz, Ph.D., in the matter of Susan Mirkin, et 9 al. vs. XOOM Energy, LLC, and XOOM Energy New York, 10 LLC. 11 Would counsel please introduce themselves 12 for the record. 13 MR. WITTELS: Steven Wittels from Wittels, 14 McInturff & Palikovic for plaintiffs and the 15 proposed class. 16 MR. ROMAN: Ethan Roman, Wittels McInturff 17 Palikovic for plaintiffs and the proposed class. 18 MR. COHEN: Steven Cohen, Wittels McInturff 19 Palikovic, for plaintiffs and the proposed class. 20 MR. MATTHEWS: This is Matt Matthews with 21 McDowell Hetherington for XOOM Energy, the 22 defendant. 23 Also with me today is XOOM's designated 24 testifying expert, David Coleman. XOOM's in-house
Page 2	Page 4
1 I N D E X 2 3 WITNESS DIRECT CROSS REDIRECT RECROSS 4 5 DERYA ERYILMAZ, 6 Ph.D. 7 8 BY MR. MATTHEWS 5 87 9 99 10 BY MR. WITTELS 81 98 11 12 * * * * 13 14 15 16 17 E X H I B I T S 18 19 NO. DESCRIPTION PAGE 20 21 (None) 22 23 24 * * * *	1 counsel, Christina Diller, may join us via Zoom at 2 some point but will not be speaking. 3 THE VIDEOGRAPHER: Okay. And would the 4 court reporter please swear in the witness. 5 DERYA ERYILMAZ, Ph.D. 6 a witness called for examination by the Defendants, 7 having been satisfactorily identified by the 8 production of her driver's license and being first 9 duly sworn by the Notary Public, was examined and 10 testified as follows: 11 DIRECT EXAMINATION 12 BY MR. MATTHEWS: 13 Q. Good morning, Dr. Eryilmaz. Thank you for 14 being here today. 15 A. Good morning. 16 Q. Before we dive into questions about the 17 case, I'll go over some basic ground rules and get a 18 little bit of information about your background. 19 A. Sure. 20 Q. First of all, have you been deposed before? 21 A. No. 22 Q. First time? 23 A. First time. 24 Q. Okay. Great.
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1 Q. I see.  
2 So in model one, when you are referring to  
3 an "overcharge," you are referring to anything that  
4 XOOM charged over its reported supply costs from the  
5 rate-setting workbooks?  
6 A. And some other data sets. But yes, overall  
7 that sounds reasonable.  
8 Q. What other data sets?  
9 A. We relied on, I think, three sets of data,  
10 primarily -- I would say four sets of data to be  
11 more accurate -- based on the data produced in the  
12 discovery requests.  
13 So rate-setting workbooks were one of the  
14 set of data. The other one was interval data where  
15 it had most of the -- it was more interval meter  
16 data where it presented the usage information by  
17 these XOOM customers, and -- and then we have  
18 received electric and gas separately, so I guess  
19 that's where the third and the fourth. And we also  
20 looked at the margin reports that XOOM produced when  
21 they were setting their rates.  
22 So those were the four forms of data sets  
23 that we received, and I -- I have compiled all of  
24 them in one single data set.

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1 understand whether, you know, XOOM's charged rates  
2 are complying with this.  
3 And what we found, that there was -- the  
4 rates were higher than the actual and estimated  
5 supply costs. So that discrepancy represented as  
6 overcharge, or damages.  
7 BY MR. MATTHEWS:  
8 Q. Is what I'm saying different than that?  
9 MR. WITTELS: Objection to the form.  
10 You can answer.  
11 THE WITNESS: I guess it's close. What  
12 you're describing is close. It's just -- maybe you  
13 can rephrase and I can reaffirm.  
14 I don't remember how did you define it.  
15 BY MR. MATTHEWS:  
16 Q. Sure.  
17 I understood that you looked at usage as  
18 well --  
19 A. Yeah, uh-huh.  
20 Q. -- but when you refer to the  
21 "overcharge" --  
22 A. Yeah.  
23 Q. -- you are describing the difference  
24 between the supply costs reported in the

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1 Q. Uh-huh.  
2 A. There were more than a thousand files --  
3 Q. Uh-huh.  
4 A. -- and I've compiled into one data set to  
5 be able to conduct the methodologies that we  
6 describe in the report.  
7 Q. Right.  
8 So I understand what you're saying about  
9 the sources of the information and the way in which  
10 you calculated things under model one.  
11 But just to be sure we're saying the same  
12 thing --  
13 A. Sure.  
14 Q. -- with respect to what you've referred to  
15 as an "overcharge," that is the difference between  
16 the rate XOOM charged and the supply costs that were  
17 reported in its rate-setting workbooks, correct?  
18 MR. WITTELS: Objection to form.  
19 But you can answer.  
20 THE WITNESS: I guess -- let me redefine  
21 what the data has and why we took the difference.  
22 So what this sales agreement says, it's  
23 "based on XOOM's actual and estimated supply costs."  
24 And that's what we request as data to be able to

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1 rate-setting workbooks and the rates that XOOM  
2 actually charged --  
3 A. That's correct.  
4 Q. -- correct?  
5 A. That sounds correct, yes.  
6 MR. WITTELS: Objection.  
7 You can answer.  
8 THE WITNESS: One thing that I would say,  
9 the -- I guess I want to add that the actual and  
10 estimated supply cost information did not only  
11 coming from the rate-setting workbooks. There were  
12 multiple other data sources that we looked at, so  
13 that's what I'm saying.  
14 BY MR. MATTHEWS:  
15 Q. That's what I was getting at.  
16 What are the other data sources from which  
17 you pulled XOOM's actual and estimated supply costs?  
18 A. The interval data, as I mentioned, that had  
19 that. And then there were, you know, some summary  
20 data sets that XOOM produced.  
21 So I guess, to sum up, all the data came  
22 from XOOM. We didn't really add anything outside of  
23 XOOM's produced discovery.  
24 Q. Uh-huh.

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5 (Pages 14 - 17)

1 A. But the data came in multiple forms.  
2 So all I did was compile all the different  
3 sets of data and put together that time series  
4 between 2013 and 2020, '21, including rates and the  
5 costs, and I took the difference. And that's the  
6 overcharge --

7 Q. Uh-huh.

8 A. -- that I've calculated.

9 Q. The interval data that you're mentioning is  
10 just data about usage for electricity and natural  
11 gas, right?

12 A. There were other information -- that data  
13 set had included other information like meter IDs  
14 and, you know, the ZIP codes and the programs that  
15 the customers are involved in. But primarily the  
16 usage information that we gathered from that and  
17 matched it to the rate-setting workbook information,  
18 too.

19 Q. Yes.

20 But the supply cost information that you  
21 used in your data calculations came only from the  
22 rate-setting workbooks, correct?

23 A. There was a summary spreadsheet produced  
24 that had, like, a complete information. We used

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1 primary data sets, but there were other data sets  
2 that we had to go through and match the information.  
3 Q. For supply costs?  
4 A. Yes.  
5 Q. What are the other documents?  
6 A. I mean, I -- the other document is the  
7 interval data and that summary data set that they  
8 provided, as we requested from them, the -- like a  
9 chunk of data that was summarized in one  
10 spreadsheet.

11 Q. And the summary included supply cost  
12 information?

13 A. Yes.

14 Q. Yes?

15 But the interval data did not include  
16 supply cost information, correct?

17 MR. WITTELS: Objection.

18 THE WITNESS: The -- the -- so I don't have  
19 the data in front of me, but the interval data  
20 included the rate that was charged, not -- the final  
21 rate that was charged, not the supply cost, as far  
22 as I remember.

23 BY MR. MATTHEWS:

24 Q. Understood.

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1 some of the data to gather that, and then some of  
2 from the rate-setting workbooks, because it came in  
3 pieces, as I mentioned. So it was not, like, a  
4 complete data set that was produced in discovery,  
5 like handed to us as a complete data set. There  
6 were more than a thousand spreadsheets, and we dig  
7 into each one of them and compiled them into a  
8 single spreadsheet.

9 So, I mean, I cannot tell you which Bates  
10 number would be which at this moment because there  
11 were a thousand data sets.

12 Q. Sure. And I'm not asking for that.

13 A. Yeah.

14 Q. And I'm not suggesting that you did  
15 anything wrong. I just want to know the source of  
16 the information from which you took what you are  
17 referring to as the actual and estimated supply cost  
18 information.

19 A. Source was XOOM.

20 Q. And more specifically in terms of  
21 documents, the source was the rate-setting workbooks  
22 that were produced in multiple versions?

23 A. I guess, yeah. I guess -- let me clarify.

24 Rate-setting workbooks was one of the

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1 So in model one, what you are referring to  
2 as the "overcharge" is anything that XOOM charged  
3 over and above its reported supply costs that were  
4 included in the rate-setting workbooks?

5 A. Yes. I would say.

6 Q. Okay. How about model two? How does model  
7 two work?

8 A. Model two is -- the assumptions are a  
9 little bit different there. We assumed, in case --  
10 you know, it doesn't say in the contract, but  
11 assumed this court, there is a margin appropriate  
12 for -- for adding to the -- to the cost. Then we  
13 calculated an alternative way. If there was a  
14 margin allowed, then we had their margin-setting  
15 workbooks, and so we calculated their margin  
16 percentages and they were given for fixed- and  
17 variable-rate customers.

18 So what we realized in that data set,  
19 variable-rate customers had substantially higher  
20 margin rate than the fixed-rate customers. So we  
21 basically said, if XOOM -- I mean the difference,  
22 the overcharge as defined is the difference between  
23 the total -- the rates and the total cost plus the  
24 fixed-rate customers' margins. That's how we

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6 (Pages 18 - 21)

1 Q. Why did you leave full-time employment at  
2 CRA?  
3 A. I took a new job. Recently it's -- I'm in  
4 transition to it right now. As you know, in  
5 litigation, you can't drop all the cases that you  
6 have immediately. So this is one of the cases that  
7 were ongoing. So I'm in transition to a new job.  
8 Q. Right. And congratulations.  
9 A. Thank you.  
10 Q. Why did you decide to change jobs?  
11 A. I guess the new opportunity seems to be  
12 that I will be still, you know, in the energy  
13 industry and will be leading a big corporation's  
14 decarbonization portfolio. So that seemed to be an  
15 exciting opportunity. That's why.  
16 Q. And that's with Amazon?  
17 A. Yes. Yes, that's correct.  
18 Q. And what will your job be there?  
19 A. I am leading their -- again, I mentioned  
20 decarbonization portfolio of their supply chain. So  
21 I'll be working with their internal and external  
22 suppliers to help them invest in renewable energy.  
23 Q. And what does that mean on a more basic  
24 level?

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1 Okay. Is the -- since you left CRA, is the  
2 rate that CRA is paid for your time in this case the  
3 same as what is stated in the CRA report?  
4 A. Yeah.  
5 Q. That financial arrangement between CRA and  
6 the plaintiffs has not changed?  
7 A. Well, so I don't fully remember my rate  
8 when I was at CRA. But potentially there's a  
9 contractor rate structure that -- that may have  
10 adjusted, but I guess I don't -- my short answer is  
11 I'm not sure.  
12 Q. Okay. What is your financial arrangement  
13 under the contractor agreement?  
14 A. I get paid per hourly.  
15 Q. And what do you get paid per hour?  
16 A. I believe it was listed in the report. It  
17 was 450, I believe.  
18 Q. Okay.  
19 A. Per hour, yeah.  
20 But, yeah, the report should have the most  
21 accurate number. I don't have it in front of me.  
22 Q. Okay. And you've agreed to continue  
23 serving as a designated expert in this case,  
24 correct?

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1 A. I will be managing their renewable energy  
2 programs, I guess, yeah. And then help the company  
3 to have more clean production and more clean  
4 energy -- purchase more clean energy, invest in  
5 clean energy. So that will be helping them  
6 strategize that.  
7 Q. I see.  
8 So sort of two sides of it: One is the  
9 purchasing energy from --  
10 A. Market.  
11 Q. -- more clean sources?  
12 A. Right.  
13 Q. Right? Green energy, whether wind or  
14 solar?  
15 A. Yeah. Uh-huh.  
16 Q. And then, on the other side, making  
17 investments in renewable companies?  
18 A. Right. Yeah.  
19 Virtual power plants or, you know, maybe  
20 Amazon has, like, their on-site solar portfolio, so  
21 I will help them to sort of -- where are the best  
22 places in the world to invest in these kinds of  
23 things. So that will be it.  
24 Q. Understood.

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1 A. Correct.  
2 Q. And what is the specialized subject matter  
3 on which you personally have been asked to opine?  
4 A. On the quantitative analysis section.  
5 So I have been in the energy industry for  
6 more than ten years now, and I have a Ph.D. in  
7 applied economics which requires me to do a lot of  
8 quantitative analysis in the energy space, so I'm  
9 familiar with energy data, and I teach at  
10 Northeastern data analytics for energy economists.  
11 So that, I believe, makes me qualified to do the --  
12 the quantitative analysis, so that's the part that I  
13 will -- that I provided my opinion.  
14 Q. Okay. Data analytics and quantitative  
15 analysis; is that a fair summary of it?  
16 A. Yeah. Of energy industry, I would say,  
17 specifically, because that's what my expertise is.  
18 Q. Okay. Are you offering any opinion about  
19 how the pricing terms of the sales agreement should  
20 be interpreted?  
21 A. Well, I guess -- if you're asking me to --  
22 that I'm giving a legal opinion? Or is that how  
23 my -- how I interpret the contract? I guess can you  
24 rephrase the question? I'm not following.

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9 (Pages 30 - 33)

1 Q. Okay. Are you offering any personal  
2 interpretation of how the pricing terms of the sales  
3 agreement -- let me rephrase it.  
4 You're not offering a legal interpretation  
5 of the sales agreement, right?

6 A. No.

7 Q. Okay. Are you offering any opinion about  
8 how the pricing terms of the sales agreement should  
9 be interpreted?

10 A. I guess as an energy economist, this -- you  
11 know, there are terms in the -- in this contract  
12 that only people who work a long time in the energy  
13 industry -- like actual and estimated supply costs,  
14 for example, is an industry-specific term.

15 So I am reading this as the contract says.

16 You know, based on actual and estimated supply  
17 costs.

18 So my interpretation of that is the rates  
19 should be according to this language. And I guess I  
20 know what it means to be looking at the supply cost,  
21 and that's what I'm understanding.

22 Q. Okay. Are you offering an opinion about  
23 what "based on" XOOM's actual and estimated supply  
24 costs means?

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1 MR. WITTELS: Objection.  
2 THE WITNESS: What do you mean when you say  
3 "cost pass-through"?

4 BY MR. MATTHEWS:

5 Q. Do you believe that XOOM can seek to  
6 recover any margin under this contract?

7 A. Under this contract, no. Because it  
8 doesn't say that. As far as I can read, it doesn't  
9 say that it can recover any margin. It says it  
10 should be based on actual and estimated supply cost.

11 Q. And in your opinion, "based on actual and  
12 estimated supply costs" means equal to actual and  
13 estimated supply costs?

14 A. If it's not exactly equal to, it should be  
15 very close to, as I mentioned. Very, very close to.

16 Q. And what does "very close to" mean?

17 A. Well, so "very close to" means that -- that  
18 the -- there's no big discrepancy between the cost  
19 and the final rate that's charged. So it should be  
20 very, very similar.

21 Q. Uh-huh.

22 And what is a "big discrepancy"?

23 A. That cannot be explained by the contract or  
24 by any economic justification that should be very

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1 A. I mean, "based on" means -- "based on  
2 actual and estimated supply costs" means very -- I  
3 mean to me, very close to -- the rate should be very  
4 close to XOOM's actual and estimated supply costs.

5 Q. Okay. And what is that opinion based on?

6 A. That is based on the contract language that  
7 has, you know, "actual and estimated supply costs."  
8 And "supply costs" are very specific  
9 technical terms in the industry. So by reading  
10 this, the XOOM's rates should be very close to the  
11 supply costs of -- supply costs that XOOM  
12 calculates.

13 Q. So to you, "based on" means very close to?

14 A. Very close to. At the -- yeah. At the  
15 minimum, very close to, yeah.

16 Q. Does it -- it doesn't mean equal to?

17 A. Very close to. It may mean equal to, or  
18 virtually -- virtually equal.

19 Q. What does "virtually equal" mean?

20 A. Very close to, I would say. It should be  
21 very close to XOOM's actual and estimated supply  
22 costs.

23 Q. Do you think this is a cost pass-through  
24 contract?

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1 big.

2 Q. Right. And in your opinion --

3 A. Uh-huh.

4 Q. -- what is a "big discrepancy" between  
5 actually and estimated supply costs and rate?

6 A. I mean, if, by looking at XOOM data, the  
7 rates that were charged were extreme -- were about  
8 50 percent higher than the costs that were charged,  
9 and that suggested that the XOOM was overcharging  
10 its customers their supply costs. So that -- that  
11 was a good -- by looking at the data, that was a  
12 good indication of that was not based on XOOM's  
13 actual and estimated supply costs.

14 MR. MATTHEWS: I'm respectfully going to  
15 object as nonresponsive.

16 Q. I'm asking a different question.

17 A. Okay.

18 Q. You're offering an opinion that "based on  
19 actual and estimated supply costs" means "very close  
20 to," which you have also said means "not a big  
21 discrepancy from."

22 A. Uh-huh. Sure.

23 Q. Right?

24 MR. WITTELS: Objection. Objection.

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10 (Pages 34 - 37)

1 THE REPORTER: It was what?  
2 THE WITNESS: It was Loehde. I don't  
3 remember the witness' last name. Sorry.  
4 BY MR. MATTHEWS:  
5 Q. But you have some recollection -- I'm not  
6 asking you to identify the witness, but you have  
7 some recollection of XOOM witnesses testifying to  
8 the fact that XOOM has fixed costs that are not  
9 included in the supply costs reported in the  
10 rate-setting workbooks, right?  
11 A. I remember, like, a witness defining a  
12 fixed cost; but I don't really remember, like,  
13 whether it was included in the supply costs or not  
14 at this moment. I mean, if it's in front of me, I  
15 can take a look at it, but I don't remember the  
16 specific wording.  
17 Q. When you prepared the calculation for model  
18 one, did you take into account XOOM's fixed costs?  
19 A. No. I actually just took the supply cost  
20 related information and calculated the actual and  
21 estimated supply costs as produced by XOOM.  
22 Q. So if XOOM did not include fixed costs in  
23 the supply costs reported in the rate-setting  
24 workbook --

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1 said?  
2 MR. WITTELS: Objection.  
3 THE WITNESS: I guess I thought you were  
4 saying that supply costs are -- you know, may -- you  
5 know, I don't know.  
6 I guess the way I understand it from what  
7 you've described is have I considered supply cost  
8 plus the other costs? But I did not. I just took  
9 the components of the supply cost, and I added them  
10 up -- I mean they were all, like, in a total supply  
11 column -- and calculated the excess -- excess  
12 charges.  
13 Q. Understood.  
14 So if fixed costs -- if XOOM has fixed  
15 costs in addition to the reported supply costs --  
16 A. Uh-huh.  
17 Q. -- then the only place that those fixed  
18 costs appear in your calculation under model one  
19 would be in the overcharge itself?  
20 MR. WITTELS: Objection.  
21 BY MR. MATTHEWS:  
22 Q. Correct?  
23 MR. WITTELS: Objection.  
24 THE WITNESS: I mean, I cannot tell from

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1 A. Uh-huh.  
2 Q. -- then those fixed costs would be included  
3 in what you have characterized as an "overcharge"  
4 under model one, right?  
5 MR. WITTELS: Objection.  
6 THE WITNESS: As I mentioned, those fixed  
7 costs are not considered as part of supply costs;  
8 therefore, they are not included in the model.  
9 BY MR. MATTHEWS:  
10 Q. They're not --  
11 A. Included my calculation. I only considered  
12 supply -- the components of the supply cost.  
13 Q. They would not be included in the supply  
14 cost portion of your calculation, correct?  
15 MR. WITTELS: Objection.  
16 THE WITNESS: Again, I only considered the  
17 supply cost components. Because, you know, we are  
18 interested in looking at the supply costs and what  
19 the rate has been charged by XOOM.  
20 BY MR. MATTHEWS:  
21 Q. Yeah.  
22 A. So anything beyond supply cost is not  
23 included in the supply cost column.  
24 Q. Okay. How is that different from what I

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1 just looking at the data what that excess charge is  
2 included. They do not define -- XOOM did not define  
3 where that excess charge came from.  
4 There was no calculation providing that,  
5 that included the fixed cost. They -- there was no  
6 calculation that showed that rate included fixed  
7 costs as I reviewed the data. The data came in as  
8 rate versus the total cost of the components of the  
9 supply cost, or the total cost, and then the  
10 difference. I cannot tell what is included in the  
11 discrepancy. It was not described in the data.  
12 BY MR. MATTHEWS:  
13 Q. Okay. Model two.  
14 A. Uh-huh.  
15 Q. Model two, as we covered earlier, is  
16 essentially the same as model one, except that it  
17 allows XOOM to recover the same gross margin on  
18 variable-rate customers that XOOM's documents  
19 reported it recovered for fixed-rate customers,  
20 right?  
21 A. Right.  
22 Again, we -- exactly. The method one plus,  
23 if there was a margin -- you know, there's -- it  
24 doesn't say in the contract that there should be a

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18 (Pages 66 - 69)

1 margin.  
2 But if -- suppose there is a margin. We  
3 basically provided that as an example to show, you  
4 know, what would be the charge look like.  
5 And looking at the margin reports, at least  
6 the margin that should be charged should be equal to  
7 the fixed-rate customers, which, you know, XOOM has  
8 made -- you know, has charged its fixed-rate  
9 customers, too, a margin. So there was that rate  
10 taken to calculate the overcharges.  
11 Q. And the purpose of -- of illustrating that  
12 second model was in case the court or the jury  
13 decides that some recovery of margin is  
14 appropriate --  
15 A. Yes.  
16 Q. -- right?  
17 But you don't believe that that reading of  
18 the contract is appropriate, right?  
19 A. No. By the read of the contract, it didn't  
20 specify margin, this contract, so -- and that's why  
21 I don't believe, yes.  
22 Q. So, in your view, if a contract doesn't  
23 specify that the company will recover margin, then  
24 the company is not allowed to recover margin?

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1 BY MR. MATTHEWS:  
2 Q. If -- if an ESCO does not specify in a  
3 variable-rate contract that the rate will include  
4 margin, then, in your view, that ESCO cannot seek to  
5 recover margin --  
6 MR. WITTELS: Objection.  
7 BY MR. MATTHEWS:  
8 Q. -- on its variable rate?  
9 MR. WITTELS: She didn't say that.  
10 Objection.  
11 THE WITNESS: Is that a hypothetical  
12 example that -- are we just talking about X ESCO  
13 here, or --  
14 BY MR. MATTHEWS:  
15 Q. Yes.  
16 A. Is that a hypothetical example?  
17 Q. Yes.  
18 A. If -- again, I mean, I am looking at this  
19 contract. If another X ESCO was giving me a  
20 contract that doesn't list the margin, yes, then I  
21 would be looking at the specifics that they have put  
22 in the contract to determine their rates.  
23 Q. Understood. Thank you.  
24 In connection with this case, you have not

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1 MR. WITTELS: Objection.  
2 THE WITNESS: I mean, this is -- I mean,  
3 I'm not a contract expert, but its contract -- it  
4 says -- it should be charging what it says in the  
5 contract. As -- I mean, you know, if -- what  
6 happens, for example, if a customer doesn't, you  
7 know, oblige with their contract? There's  
8 implications for that, too. So if it doesn't say in  
9 the contract, yes, that shouldn't be charged.  
10 BY MR. MATTHEWS:  
11 Q. If it doesn't specify a margin, it  
12 shouldn't be charged?  
13 MR. WITTELS: Objection.  
14 THE WITNESS: Yes.  
15 BY MR. MATTHEWS:  
16 Q. And that's -- to be clear, that's your view  
17 more broadly? I'm not just asking about this  
18 specific XOOM contract --  
19 A. Uh-huh.  
20 Q. -- correct?  
21 MR. WITTELS: Objection.  
22 THE WITNESS: I guess -- what's the  
23 question?  
24

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1 done any analysis of how XOOM's variable rates  
2 compared to the utilities' rates, correct?  
3 A. We -- I think Figure 1 in our report does  
4 present a -- like an illustration or -- like  
5 presents the data that shows the total cost versus  
6 the utility rate.  
7 Q. Shows how the two moved over the same  
8 period of time?  
9 A. Exactly.  
10 Q. Okay. But you're not offering an opinion  
11 in this case that under the sales agreement, that  
12 XOOM was not permitted to charge more than the  
13 utility, right?  
14 MR. WITTELS: Objection.  
15 THE WITNESS: No. I mean, XOOM -- I mean  
16 our basis was the actual and estimated supply cost,  
17 whatever it should be charging.  
18 BY MR. MATTHEWS:  
19 Q. And the utility's rate is irrelevant to  
20 that consideration, right?  
21 MR. WITTELS: Objection.  
22 THE WITNESS: It is irrelevant for this  
23 contract. But we showed -- you know, our figure  
24 presents, you know, whether the total cost and

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19 (Pages 70 - 73)

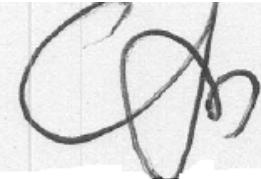
<p>1                   RECROSS-EXAMINATION 2   BY MR. WITTELS: 3   Q. As part of its analysis, the NYPSC -- and 4 I'm reading from your report -- said that it had 5 extensive -- an extensive set of hearings and 6 investigation, right? That's what you wrote on 7 Paragraph 34? 8   A. Uh-huh. Yes. 9   Q. Okay. You didn't read all the hearings and 10 detail -- strike that. 11      You didn't review all of the transcripts of 12 the hearings, correct? 13   A. No. 14   Q. So they may well have looked at contracts 15 to analyze whether the PSC thought they were -- the 16 ESCOs were overcharging customers, correct? 17    MR. MATTHEWS: Objection, leading. 18    THE WITNESS: That is possible, yes. I did 19 not read all of the documents that's produced in the 20 proceeding to come up with this order. 21      That's possible that there are transcripts 22 that lists and discusses that contract review and 23 opinions about that. 24    MR. WITTELS: Okay. I have no further</p>	<p>1                   C E R T I F I C A T E 2   I, DERYA ERYILMAZ, Ph.D., do hereby certify that 3 I have read the foregoing transcript of my 4 testimony, and further certify under the pains and 5 penalties of perjury that said transcript 6 (with/without) suggested corrections is a true and 7 accurate record of said testimony. 8   Dated at _____, this ____ day of _____, 9 2022. 10 11 _____ 12 13 14 15 16 17 18 19 20 21 22 23 24</p>
<p>Page 98</p> <p>1 questions. 2                   FURTHER REDIRECT EXAMINATION 3   BY MR. MATTHEWS: 4   Q. Dr. Eryilmaz, did you review any hearing 5 transcripts from the PSC proceedings? 6   A. No. I reviewed the order in detail. 7   MR. MATTHEWS: Got it. 8   Thank you very much. 9   MR. WITTELS: Okay. Thank you. 10     THE VIDEOGRAPHER: The time is 12:52. 11 We're off the record. 12     THE REPORTER: Copy, Mr. Wittels? 13     MR. WITTELS: Put on the record read and 14 sign, please. 15     THE REPORTER: And a copy? You're 16 ordering a copy? 17     MR. WITTELS: No. Just read and sign. 18 That's how it works. 19     THE REPORTER: Off the record? 20     MR. WITTELS: Off the record. 21       (Whereupon, the deposition was 22 concluded at 12:52 p.m.) 23 24</p>	<p>Page 100</p> <p>1                   SUGGESTED CORRECTIONS 2   RE: SUSANNA MIRKIN and BORIS MIRKIN, Individually and on Behalf of All Others Similarly Situated vs. 3 XOOM ENERGY, LLC; and XOOM ENERGY NEW YORK, LLC 4 WITNESS: DERYA ERYILMAZ, Ph.D., Vol. I 5 The above-named witness wishes to make the following changes to the testimony as originally given: 6 7   PAGE LINE   SHOULD READ   REASON 8 _____ 9 _____ 10 _____ 11 _____ 12 _____ 13 _____ 14 _____ 15 _____ 16 _____ 17 _____ 18 _____ 19 _____ 20 _____ 21 _____ 22 _____ 23 _____ 24 _____</p>

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1 COMMONWEALTH OF MASSACHUSETTS)  
2 SUFFOLK, SS. )  
3 I, Alexander K. Loos, RDR and Notary Public in  
4 and for the Commonwealth of Massachusetts, do hereby  
5 certify that there came before me on the 15th day of  
6 November, 2022, at 10:25 a.m., the person  
7 hereinbefore named, who was by me duly sworn to  
8 testify to the truth and nothing but the truth of  
9 her knowledge touching and concerning the matters in  
10 controversy in this cause; that she was thereupon  
11 examined upon her oath, and her examination reduced  
12 to typewriting under my direction; and that the  
13 deposition is a true record of the testimony given  
14 by the witness. I further certify that I am neither  
15 attorney or counsel for, nor related to or employed  
16 by, any attorney or counsel employed by the parties  
17 hereto or financially interested in the action.

18  ve hereunto set my hand  
19 d this 27th day of  
20  
21  
22

23 Notary Public

24 Commission expires 5/5/28

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1 Steven Wittles  
2 Slw@wittelslaw.com  
3 November 28, 2022  
4 RE: Mirkin vs. XOOM Energy  
5 DEPOSITION OF: Derya Eryilmaz 5544030  
6 The above-referenced witness transcript is  
7 available for read and sign.  
8 Within the applicable timeframe, 30 days, the witness  
9 should read the testimony to verify its accuracy. If  
10 there are any changes, the witness should note those  
11 on the attached Errata Sheet.  
12 The witness should sign and notarize the  
13 attached Errata pages and return to Veritext at  
14 errata-tx@veritext.com.  
15 According to applicable rules or agreements, if  
16 the witness fails to do so within the time allotted,  
17 a certified copy of the transcript may be used as if  
18 signed.

19 Yours,  
20 Veritext Legal Solutions  
21  
22  
23  
24  
25

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